

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 125 of 2012**

1. Phangeshwar @ Mangesh @ Fankesh S/o Likhanram Joshi, aged about 28 years, R/o Haidalkodi @ Bade Telgaon, Thana Gaindatola, Distt. Rajnandgaon (CG).
2. Subhash Yadav S/o Late Vidyaprasad Yadav, age about 55 years, R/o Village Ghoghare, Ashirwad Travels, Thana and Tah.- Chhuriya, Distt. Rajnandgaon C.G.

---- Appellants**Versus**

1. Laxmi Bai Wd/o Late Chandrabhan, aged about 21 years.
2. Nitesh Kumar S/o Late Chandrabhan, aged about 6 years, Minor through mother Laxmi Bai-Respondent No.1.
3. Lalluram Nai, S/o Shyamlal, aged about 52 years.
4. Smt. Rabati W/o Lalluram, aged about 48 years
All R/o Village Nadiya Khurd, Post- Bamhani Charbhata, Tah- Chhuriya, Distt. Rajnandgaon C.G.
5. National Insurance Co. Ltd., Through Branch Manager, Regional Office Kamathi Line, Rajnandgaon, Distt. Rajnandgaon C.G.

---- Respondents

For Appellant	:	Shri Samir Singh, Advocate.
For Claimants	:	Shri Aman Kesharwani, Advocate.
For Insurance Co.:	:	Shri Dashrath Gupta, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****08.02.2018**

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the driver and owner assailing the award dated 02.05.2011 passed by the IInd Additional Motor Accident Claims Tribunal, Rajnandgaon (in short, the Tribunal) in Claim Case No.51 of 2011.
2. Vide the said impugned award, the Tribunal has awarded a compensation of Rs.4,19,000/-to the claimants along with interest @ 6 percent per annum from the date of application. While passing the

award, the Tribunal has exonerated the insurance company of its liability and have fastened the same upon the appellants-driver and owner of the offending vehicle.

3. It is a case where the deceased Chandrabhan is said to have met with an accident from Bus the belonging to the appellants bearing registration No.CG-08-ZA-2001. The contention of the appellant is that the said vehicle was duly insured with the respondent-insurance company and therefore any liability, if at all, should have been shifted upon the insurance company. He submits that though in the FIR a different vehicle number was given but the said vehicle did not belong to the appellants and therefore the impugned award deserves to be modified by shifting liability upon the insurance company.
4. According to appellants, they had adduced evidence of appellant himself before the Tribunal and has produced document Ex. D/7 showing details of the different vehicles owned in the family of the appellants and where the vehicle No. CG-04-ZA-4858 is not reflected which shows that the said vehicle was not belonging to the appellants. He further submits that infact the vehicle which was involved in the accident was CG-08-ZA-2001 which was duly insured and not the vehicle No.CG-04-ZA-4858.
5. On the other hand, the counsel for the respondent-insurance company as well as claimants opposes the appeal on the ground that there is no sufficient evidence was led by the owner, to establish that the accident did not occur from CG-04-ZA-4858, however, since the said vehicle was not insured, they have created a story projecting the

vehicle bearing registration No.CG-08-ZA-2001 to be the vehicle involved in the accident. Counsel for the respondents submits that this proposition which was floated by the appellants has been rightly rejected by the Tribunal accepting the same to be an afterthought theory created by the appellants. Thus, prayed for rejection of the appeal.

6. Having heard the counsel on either side and on perusal of records, indisputably the FIR was lodged on the date of accident itself i.e. 11.02.2009 at Police Station, Chhuriya, District Rajnandgaon, where the case was registered as Crime No.41/2009 for the offence under Section 304 IPC and Sections 39,56,66/192 and 146/196 of Motor Vehicles Act against the appellant No.1-Phangeshwar. In the said FIR, the particulars of the vehicle involved in the accident was shown to be as CG-04-ZA-4858. Further, what also is reflected is the specific finding of the Tribunal itself that the FIR has been recorded by one Shankar Ramteke who was a Teacher by profession and therefore since he was an educated person, there was no reason for him to have given incorrect vehicle number while lodging FIR.
7. Further, what is also reflected is that except for the evidence of the appellant himself, there is no sufficient cogent evidence adduced by the appellants to disprove the contention of the claimants or establishing the fact that the accident did occur from the vehicle bearing registration No. CG-08-ZA-2001.
8. This court finds the award of the Tribunal to be just, reasonable and a speaking award, dealing with all the issues raised before the Tribunal

and hence does not find scope of any interference with the impugned award and the findings of the liability of payment of compensation being fastened upon the appellants.

9. This court is not inclined to interfere with the award also on the ground that there were bunch of claim cases arising out of the same accident and in all the cases the award has been passed against the appellants and except for the present appeal, there was one more appeal preferred by the appellants, however, the said appeal got dismissed and as such the said award have attained finality. Moreover no appeal was filed in the other cases where the award was passed against the present appellant.
10. The appeal of the appellants-driver and owner thus being devoid of merit deserves to be and is accordingly rejected.

Sd/-
(P.Sam Koshy)
Judge